Senate

General Assembly **File No. 417**

January Session, 2005 Substitute Senate Bill No. 1232

Senate, April 19, 2005

The Committee on Finance, Revenue and Bonding reported through SEN. DAILY of the 33rd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING CERTAIN TAXES ADMINISTERED BY THE DEPARTMENT OF REVENUE SERVICES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subsection (a) of section 12-285b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2005*):

(a) Every tobacco product manufacturer, as defined in section 4-28h, selling cigarettes to consumers within this state, whether directly or through a distributor, dealer, or similar intermediary or intermediaries, shall secure a cigarette manufacturer's license from the Commissioner of Revenue Services. Such license shall be renewable annually. The annual fee for a cigarette manufacturer's license shall be five thousand dollars. <u>The commissioner shall not include or retain in the directory of tobacco product manufacturers developed and maintained in accordance with section 4-28m, as amended by this act,</u>

the name or brand families of any tobacco product manufacturer that has failed to secure and retain a cigarette manufacturer's license in accordance with this section.

Sec. 2. Subsection (a) of section 4-28m of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2005*):

(a) (1) Not later than July 1, 2005, the commissioner shall develop and make available for public inspection, on the Department of Revenue Services' website and in such other forms as the commissioner deems appropriate, a directory listing of all tobacco product manufacturers that have (A) provided current and accurate certifications conforming to the requirements of section 4-28*l* and all brand families that are listed in such certifications, and (B) secured a cigarette manufacturer's license pursuant to section 12-285b, as amended by this act. The commissioner shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory current and in conformity with the requirements of sections 4-28k to 4-28r, inclusive.

(2) The commissioner shall not include or retain in such directory the name or brand families of any manufacturer (A) that has failed to provide the required certification, **[**or**]** (B) whose certification the commissioner determines is not in compliance with the provisions of section 4-28*l*, unless such violation has been remedied to the satisfaction of the commissioner, or (C) who has failed to secure or retain a cigarette manufacturer's license pursuant to section 12-285b, as amended by this act.

(3) The commissioner shall not include or retain in the directory any brand family of a nonparticipating manufacturer if the commissioner concludes: (A) All escrow payments required pursuant to the provisions of sections 4-28h to 4-28j, inclusive, for any period for any brand family, whether or not listed by such nonparticipating manufacturer, have not been fully paid into a qualified escrow fund

governed by a qualified escrow agreement that has been approved by the Attorney General, or (B) any outstanding final judgment, including interest thereon, for a violation of sections 4-28h to 4-28j, inclusive, has not been fully satisfied for such brand family and such manufacturer.

Sec. 3. Subdivision (20) of subsection (a) of section 12-213 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage and applicable to taxable years commencing on or after January 1, 2005*):

(20) (A) "Carrying on or doing business" means and includes each and every act, power or privilege exercised or enjoyed in this state, as an incident to, or by virtue of, the powers and privileges acquired by the nature of any organization whether the form of existence is corporate, associate, joint stock company or fiduciary, and includes the direct or indirect engaging in, transacting or conducting of activity in this state by an electric supplier, as defined in section 16-1, or generation entity or affiliate, as defined in section 16-1, for the purpose of establishing or maintaining a market for the sale of electricity or of electric generation services, as defined in section 16-1, to end use customers located in this state through the use of the transmission or distribution facilities of an electric distribution company, as defined in section 16-1, or, until unbundled in accordance with section 16-244e, electric company, as defined in section 16-1;

(B) A company that has contracted with a commercial printer for printing and distribution of printed material shall not be deemed to be carrying on or doing business in this state because of (i) the ownership or leasing by that company of tangible or intangible personal property located at the premises of the commercial printer in this state, (ii) the sale by that company of property of any kind produced or processed at and shipped or distributed from the premises of the commercial printer in this state, (iii) the activities of that company's employees or agents at the premises of the commercial printer in this state, which activities relate to quality control, distribution or printing services performed by the printer, or (iv) the activities of any kind performed by the commercial printer in this state for or on behalf of that company;

(C) A company that participates in a trade show or shows at the convention center, as defined in subdivision (3) of section 32-600, shall not be deemed to be carrying on or doing business in this state, regardless of whether the company has employees or other staff present at such trade shows, provided such company's activity at such trade shows is limited to displaying goods or promoting services, no sales are made, any orders received are sent outside this state for acceptance or rejection and are filled from outside this state, and provided further that such participation is not more than fourteen days, or part thereof, in the aggregate during the company's income year for federal income tax purposes.

Sec. 4. Subdivision (15) of subsection (a) of section 12-407 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage and applicable to taxable years commencing on or after January 1, 2005*):

(15) (A) "Engaged in business in the state" means and includes but shall not be limited to the following acts or methods of transacting business: (i) Selling in this state, or any activity in this state in connection with selling in this state, tangible personal property for use, storage or consumption within the state; (ii) engaging in the transfer for a consideration of the occupancy of any room or rooms in a hotel or lodging house for a period of thirty consecutive calendar days or less; (iii) rendering in this state any service described in any of the subparagraphs of subdivision (2) of this subsection; (iv) maintaining, occupying or using, permanently or temporarily, directly or indirectly, through a subsidiary or agent, by whatever name called, any office, place of distribution, sales or sample room or place, warehouse or storage point or other place of business or having any representative, agent, salesman, canvasser or solicitor operating in this state for the purpose of selling, delivering or taking orders; (v) notwithstanding the fact that retail sales are made from outside this state to a destination

within this state and that a place of business is not maintained in this state, engaging in regular or systematic solicitation of sales of tangible personal property in this state by the display of advertisements on billboards or other outdoor advertising in this state, by the distribution of catalogs, periodicals, advertising flyers or other advertising by means of print, radio or television media, or by mail, telegraphy, telephone, computer data base, cable, optic, microwave or other communication system, for the purpose of effecting retail sales of tangible personal property, provided one hundred or more retail sales from outside this state to destinations within this state are made during the twelve-month period ended on the September thirtieth immediately preceding the monthly or quarterly period with respect to which liability for tax under this chapter is determined; (vi) being owned or controlled, either directly or indirectly, by a retailer engaged in business in this state which is the same as or similar to the line of business in which the retailer so owned or controlled is engaged; (vii) being owned or controlled, either directly or indirectly, by the same interests that own or control, either directly or indirectly, a retailer engaged in business in this state which is the same as or similar to the line of business in which the retailer so owned or controlled is engaged; (viii) being the assignee of a person engaged in the business of leasing tangible personal property to others, where leased property of such person is situated within this state and such assignee has a security interest, as defined in subsection (37) of section 42a-1-201, in such property; and (ix) notwithstanding the fact that retail sales of items of tangible personal property are made from outside this state to a destination within this state and that a place of business is not maintained in this state, repairing or servicing such items, under a warranty, in this state, either directly or indirectly through an agent, independent contractor or subsidiary.

(B) A retailer who has contracted with a commercial printer for printing and distribution of printed material shall not be deemed to be engaged in business in this state because of the ownership or leasing by the retailer of tangible or intangible personal property located at the premises of the commercial printer in this state, the sale by the retailer of property of any kind produced or processed at and shipped or distributed from the premises of the commercial printer in this state, the activities of the retailer's employees or agents at the premises of the commercial printer in this state, which activities relate to quality control, distribution or printing services performed by the printer, or the activities of any kind performed by the commercial printer in this state for or on behalf of the retailer.

(C) A retailer not otherwise a retailer engaged in business in the state who purchases fulfillment services carried on in this state by a person other than an affiliated person, or who owns tangible personal property located on the premises of an unaffiliated person performing fulfillment services for such retailer shall not be deemed to be engaged in business in the state. For purposes of this subparagraph, persons are affiliated persons with respect to each other where one of such persons has an ownership interest of more than five per cent, whether direct or indirect, in the other, or where an ownership interest of more than five per cent, whether direct or indirect, is held in each of such persons by another person or by a group of other persons who are affiliated persons with respect to each other. For purposes of this subparagraph, "fulfillment services" means services that are performed by a person on its premises on behalf of a purchaser of such services and that involve the receipt of orders from the purchaser of such services or an agent thereof, which orders are to be filled by the person from an inventory of products that are offered for sale by the purchaser of such services, and the shipment of such orders to customers of the purchaser of such services.

<u>(D) A retailer not otherwise a retailer engaged in business in this state that participates in a trade show or shows at the convention center, as defined in subdivision (3) of section 32-600, shall not be deemed to be engaged in business in this state, regardless of whether the retailer has employees or other staff present at such trade shows, provided the retailer's activity at such trade shows is limited to displaying goods or promoting services, no sales are made, any orders received are sent outside this state for acceptance or rejection and are</u>

filled from outside this state, and provided further that such participation is not more than fourteen days, or part thereof, in the aggregate during the retailer's income year for federal income tax purposes.

Sec. 5. Subdivision (7) of section 12-430 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005, and applicable to contracts entered into on or after October 1, 2005*):

(7) (A) As used in this section, (i) "nonresident contractor" means a contractor who does not maintain a regular place of business in this state; [and] (ii) "regular place of business" means any bona fide office, factory, warehouse or other space in this state at which a contractor is doing business in its own name in a regular and systematic manner, and which place is continuously maintained, occupied, and used by the contractor in carrying on its business through its employees regularly in attendance to carry on the contractor's business in the contractor's own name, except that "regular place of business" does not include a place of business for a statutory agent for service of process, or a temporary office [at the site of construction] location used by the contractor only for the duration of the contract, whether or not at the site of construction, or an office maintained, occupied and used by a person affiliated with the contractor; and (iii) "person doing business with a nonresident contractor" does not include an owner or tenant of real property used exclusively for residential purposes and consisting of three or fewer dwelling units, in one of which the owner or tenant resides, provided each nonresident contractor doing business with such owner or tenant shall be required to comply with the bond requirements under subparagraph (F) of this subdivision.

(B) Any person doing business with a nonresident contractor [shall withhold payment in an amount of five per cent of the contract price and remit such amount as a deposit to the Commissioner of Revenue Services not later than thirty days after the completion of the contract] and making payments to such nonresident contractor shall deduct and withhold from such payments an amount of five per cent of such payments, unless such nonresident contractor has furnished a certificate of compliance as described in subparagraph (E) of this subdivision. The amounts so required to be deducted and withheld shall be paid over to the commissioner within six months of the first payment to the nonresident contractor and every three months thereafter, and each of such payments to the commissioner shall be accompanied by a form prescribed by the commissioner. The amount required to be deducted and withheld from the nonresident contractor, when so deducted and withheld, shall be held to be a special fund in trust for the state. No nonresident contractor shall have any right of action against a person deducting and withholding under this subdivision with respect to any moneys deducted and withheld and paid over to the commissioner in compliance with or intended compliance with this subdivision.

(C) A nonresident contractor shall request, in writing, that the Commissioner of Revenue Services audit the records of such contractor for a project for which [a deposit was made under subparagraph (B) of this subdivision] amounts were deducted and withheld from such contractor under subparagraph (B) of this subdivision. If such request is not made within three years after the date the final payment of such amounts was made to the commissioner, such contractor waives the right to request such audit and claim a refund of such amounts. The commissioner shall, after receipt of such request, conduct an audit and issue to the nonresident contractor a certificate of no tax due or a certificate of tax due from the nonresident contractor. [Upon] Not later than ninety days after the issuance of a certificate of no tax due, the commissioner shall return [such deposit] to the nonresident contractor the amounts deducted and withheld from such contractor and paid over to the commissioner. Upon issuance of a certificate of taxes due, the commissioner may [pay to the nonresident contractor out of the deposit any excess over the amount] return to the nonresident contractor the amount by which the amounts deducted and withheld and paid over to the commissioner under subparagraph (B) of this subdivision exceed the amount of taxes set forth in the certificate, together with the interest and penalties then assessed.

(D) When a person doing business with the nonresident contractor [deposits with] pays over to the Commissioner of Revenue Services [the amount set forth in] amounts deducted and withheld pursuant to subparagraph (B) of this subdivision, [the commissioner shall issue such person a receipt for such amount. Upon the issuance of such receipt, the person doing business with the nonresident contractor] such person shall not be liable for any claim of the nonresident contractor for such [amount] amounts or for any claim of the commissioner for any taxes of the nonresident contractor arising from the activities of the nonresident contractor on the project for which the [deposit was made] amounts were paid over. Such payment shall not relieve the person doing business with the nonresident contractor of such person's liability for sales and use taxes due on purchases of tangible personal property or services from such nonresident contractor.

(E) When a nonresident contractor enters into a contract with the state, said contractor shall provide the Labor Department with evidence demonstrating compliance with the provisions of chapters 567 and 568, the prevailing wage requirements of chapter 557 and any other provisions of the general statutes related to conditions of employment.

(F) Not later than one hundred twenty days after the [commencement of the contract] date the first payment to the nonresident contractor is made, or thirty days after the completion of the contract, whichever is earlier, a nonresident contractor may [petition the commissioner to] (i) furnish a guarantee bond in a sum equivalent to five per cent of the contract price, or (ii) deposit with the commissioner a cash bond in a sum equal to five per cent of the contract price, in lieu of the requirements contained in subparagraph

(B) of this subdivision. The commissioner may [grant such petition] accept such bond on such terms and conditions as the commissioner may require, and upon acceptance of such bond, shall issue a certificate of compliance to the contractor. The provisions of subparagraph (C) of this subdivision shall apply to such bond, upon completion of the contract, in the same manner as such provisions apply to [the deposit] amounts paid over under subparagraph (B) of this subdivision.

(G) Upon the furnishing of a certificate of compliance by the nonresident contractor to the person doing business with a nonresident contractor, such person shall not be liable for any claim of the commissioner for any taxes of the nonresident contractor arising from the activities of such contractor on the project for which the bond was provided. Such certificate of compliance shall not relieve the person doing business with the nonresident contractor of such person's liability for sales and use taxes due on purchases of tangible personal property or services from such nonresident contractor.

(H) If any person doing business with a nonresident contractor fails to deduct and withhold and pay over to the commissioner amounts under subparagraph (B) of this subdivision, or fails to obtain a certificate of compliance from the nonresident contractor pursuant to subparagraph (G) of this subdivision, such person shall be personally liable for payment of any taxes of the nonresident contractor arising from the activities of such contractor on the project for which such amounts or certificate were required.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*July 1, 2005*	12-285b(a)
Sec. 2	*July 1, 2005*	4-28m(a)
Sec. 3	*from passage and applicable to taxable years commencing on or after January 1, 2005*	12-213(a)(20)

Sec. 4	*from passage and applicable to taxable years commencing on or after January 1, 2005*	12-407(a)(15)
Sec. 5	*October 1, 2005, and applicable to contracts entered into on or after October 1, 2005*	12-430(7)

FIN *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note and OLR Bill Analysis

sSB-1232
AN ACT CONCERNING CERTAIN TAXES ADMINISTERED BY THE DEPARTMENT OF REVENUE SERVICES.

State Impact:

Agency Affected	Fund-Effect	FY 06 $	FY 07 $
Department of Revenue Services	GF - See Below	Minimal	Minimal

Note: GF=General Fund

Municipal Impact: None

OFA FISCAL IMPACT:

The bill is estimated to have a minimal fiscal impact to the General Fund.

OLR SUMMARY:

This bill:

1. requires cigarette manufacturers to get and maintain a Connecticut cigarette manufacturer's license as a condition of being listed or having their cigarette brand families listed in the Department of Revenue Services (DRS) directory of manufacturers that comply with the tobacco settlement agreement and whose cigarettes may thus be sold in Connecticut;

2. exempts companies whose only business activity in Connecticut is participating in trade shows at the Hartford convention center from state corporation and sales taxes, if they meet certain conditions; and

3. revises timetables, definitions, and procedures for providing

security for Connecticut taxes due in connection with nonresident (out-of-state) contractor activities in this state.

EFFECTIVE DATE: Various, see below.

§§ 1 & 2 – Tobacco Product Manufacturers' Directory

OFA Fiscal Impact:
No Fiscal Impact.

OLR Analysis:

The law requires DRS to compile and publish, by July 1, 2005, a directory of tobacco product manufacturers that are complying with the tobacco settlement agreement with the state, and their cigarette brands and brand families. It is illegal to sell, offer to sell, distribute, or possess for sale in Connecticut cigarettes whose manufacturer or brand family is not listed in the directory.

This bill requires that, to be included in the directory, a manufacturer also have a state cigarette manufacturer's license. The annually renewable license is required for any manufacturer who, directly or indirectly, sells cigarettes in the state. The law already bars DRS from issuing a license to any manufacturer that is not complying with the tobacco settlement.

EFFECTIVE DATE: July 1, 2005

§§ 3 & 4 – Exclusion from Corporation and Sales Tax Nexus

OFA Fiscal Impact:
The provisions are not anticipated to result in any fiscal impact.

OLR Analysis:

The bill exempts companies and retailers from corporation and sales and use taxes, if their only activity in Connecticut is participating in trade shows at the Hartford convention center. Under the bill, such companies are not subject to the state taxes, even if they have employees or other staff present at the trade shows, as long as:

1. their activity at the shows involves only displaying goods or promoting services,

2. they make no sales,

3. they send any orders they take outside the state to be accepted or rejected,

4. the orders are filled outside the state, and

5. the companies participate in the shows on no more than 14 days during any income year they use for federal income tax purposes.

EFFECTIVE DATE: Upon passage and applicable to tax years starting on or after January 1, 2005.

§ 5 – Tax Security Procedures for Transactions With Nonresident Contractors

OFA Fiscal Impact:

The provisions would result in a revenue gain to the extent that it enhances the DRS abilities to collect tax revenue due to the state from purchases and services performed by out-of-state contractors.

OLR Analysis:

To provide security for Connecticut taxes due in connection with a nonresident contractor's activities in the state, the law requires a person doing business with a nonresident contractor to either (1) withhold and deposit with DRS 5% of the contract price or (2) obtain a certificate from the contractor showing that the contractor has posted a bond for an equivalent amount with DRS.

This bill:

1. exempts a homeowner or tenant from the security requirements for a contract involving his own residence with three or fewer units, as long as the contractor posts the required security bond;

2. changes timetables and procedures for the withholding payments and the bonds by, among other things, requiring withholding from periodic payments during the contract rather than at the end;

3. establishes a three-year deadline after the contract ends for a contractor to request that DRS audit his tax liability;

4. requires DRS to refund any excess security to the contractor within 90 days after completing the audit and finding no tax due;

5. specifies that compliance with security requirements does not relieve a customer of liability for sales and use taxes due on services or tangible personal property he buys from the contractor;

6. makes a customer who does not comply with the security requirements personally liable for the nonresident contractor's taxes stemming from the project; and

7. expands who qualifies as a nonresident contractor subject to the

tax security requirements.

Withholding Procedure

The bill changes the schedule for a customer to remit to DRS amounts withheld from payments to a nonresident contractor. Instead of requiring the customer to withhold 5% of the full contract amount and remit it to DRS within 30 days after the contract is completed, the bill requires that the customer withhold 5% of each payment to the contractor, transfer the amounts withheld to DRS within six months of the first payment, and transfer amounts withheld from subsequent payments every three months. It requires each transfer to be accompanied by a DRS form and requires DRS to hold the transferred amounts in a special trust fund. The bill bars a nonresident contractor from suing anyone for withholding money from payments and transferring it to DRS to comply with the bill.

The bill also eliminates a requirement that DRS issue a receipt to the customer for each withholding amount transferred.

Bond Procedure

As an alternative to the customer withholding part of the contractor's payments, the law allows the contractor to post security with DRS in the form of a bond to guarantee tax payments. The bond must equal 5% of the contract amount.

The bill changes the deadline for a contractor to post the bond. Current law gives the contractor 120 days after the contract begins to petition DRS to be allowed to furnish a guarantee bond in lieu of customer withholding. The bill eliminates the petition and requires the contractor to actually post the bond by the earlier of (1) the date the customer makes his first payment to the contractor or (2) 30 days after the contract ends. It also allows the contractor to post a cash bond as an alternative to the guarantee bond required under current law.

The bill requires DRS to issue the bond compliance certificate to the contractor when it accepts the bond, rather than when it grants a contractor's petition to post a bond. It also specifies that a customer who receives a bond compliance certificate from the contractor is not liable for any DRS claim for taxes arising out of the contractor's activities. This provision already applies to customers who withhold tax security from payments to the contractor.

Deadline for Audit Requests and Refunds

The law requires a contractor who posted a bond or whose payments were withheld to file a written request that the DRS commissioner audit his records for the project to determine if he owes taxes. The bill establishes a deadline for a contractor to request the audit of three years after transfer of the final payment to DRS. If a contractor fails to file his request in time, he waives his right both to an audit and any refund of excess amounts withheld or excess bond amounts.

The bill requires DRS to refund excess amounts within 90 days after completing its audit and issuing a certificate of no tax due.

Nonresident Contractor Definition

Current law defines a nonresident contractor as one who does not continuously maintain or occupy any Connecticut office, factory, warehouse, or other space where it regularly and systematically does business in its own name through employees in regular attendance there. The bill specifies that, to be a Connecticut contractor, the employees must not just be in regular attendance but also be carrying on the contractor's business in the contractor's own name.

In determining whether a contractor has a regular place of business in the state, current law excludes a temporary office at a construction site in Connecticut. The bill expands this exclusion to cover (1) temporary offices used only for the duration of the contract, whether or not they are located at a construction site and (2) offices maintained, occupied, and used by a contractor's affiliate.

EFFECTIVE DATE: October 1, 2005 and applicable to contracts entered into on or after that date.

COMMITTEE ACTION

Finance, Revenue and Bonding Committee

Joint Favorable Substitute			
Yea	43	Nay	0